RECENT DECISIONS

ADMIRALITY—RIGHT OF VESSEL TO OFFSET EXPENSE OF MEDICAL TREATMENT OF SEAMAN—DISEASE DUE TO SEAMAN'S VICES.—An alien mate of an American vessel, while indulging his own vices on shore, contracted a venereal disease, and upon arrival in a United States port was sent to a marine hospital by order of the immigration authorities. The vessel was required by law to pay the expenses of his treatment. *Held,* the vessel was entitled to offset such payment against wages due the mate. *The Coniscliff,* 266 Fed. 959.

That a seaman is entitled to maintenance and cure at the expense of the vessel or owner for any sickness incurred or injury received while in the service of the ship is an ancient and universally recognized general proposition. *Harden* v. *Gordon,* 11 Fed. Cas. 481; *The Osceola,* 189 U. S. 158. This right of a seaman constitutes in contemplation of law a part of his contract for wages. *Harden* v. *Gordon, supra.* It is now held that the liability of the ship may extend for a reasonable time beyond the seaman's term of service when necessary to effect a cure. *The W. L. White,* 25 Fed. 503; *The Wensleydale,* 41 Fed. 829. But see *Nevitt* v. *Clarke,* 18 Fed. Cas. 29, for the former rule.

It is not essential that the injury or sickness be attributable directly to some particular act of labor, but it is sufficient that the seaman was incapacitated when subject to duty as such. *The Bouker No. 2,* 241 Fed. 831. Ordinary negligence, consistent with good faith and an honest intention towards duty, will not forfeit this right, admiralty courts being lenient to mariners in this respect. *Peterson* v. *The Chandos,* 4 Fed. 645; *The Mars,* 149 Fed. 729. An injury inflicted by an officer in punishing a seaman in an improper manner was held to have been received "in the service of the ship". *Ringgold* v. *Crocker,* 20 Fed. Cas. 813.

But where the disability results from the seaman's own vices, wilful disobedience to orders, gross neglect of duty or active misconduct, the cost of medical treatment need not be borne by the ship. It was held in *Chandler* v. *The Annie Buckman,* 5 Fed. Cas. 449, that a sailor is not entitled even to be treated on shipboard at the expense of the ship or to wages for the period of incapacity, when he is disabled by a disease brought on by his own vices or when, being in a diseased condition, he ships as an able man. See also *The Alector,* 263 Fed. 1007; *Pierce* v. *Patton,* 19 Fed. Cas. 636. A ship's mate who failed to notify his master of the presence of a stowaway on board when discovered by him was thereby made chargeable with part of the expense caused the vessel by his being smuggled ashore at a United States port. *The Ellen Little,* 246 Fed. 151. An extreme view of the cases in question is presented by *Johnson* v. *Huckins,* 13 Fed. Cas. 749, in which it was said that in case of a sickness caused by the seaman's own fault he would be charged with the expenses of subsistence.

Set-offs by way of diminished compensation for maritime services

are allowed under general law for misconduct or imperfect performance of duties. *Willard* v. *Dorr*, 29 Fed. Cas. 1277. And when a seaman in a foreign port is put ashore at his own request from a vessel equipped with a proper medicine chest and there receives medical treatment, it seems that the expenses may be so deducted. *Pierce* v. *Patton, supra.*

The decision in the *The Alector, supra,* handed down by Judge Waddill for the Federal Court of the Eastern District of Virginia, was applied to facts practically identical with those constituting the instant case and the results in the two cases are in absolute accord.

BAILMENTS—MISPLACED PROPERTY—LARCENY.—The plaintiff, while a passenger on a subway car operated by the defendant, saw a package on a seat opposite him, which had been left inadvertently by another passenger, who had alighted. The plaintiff picked up the package, and finding no name or mark upon it, took it. After he had disembarked, a railway guard inquired what he was going to do with the package. Whereupon the plaintiff replied that he would keep the package and advertise for the owner, offering to give his name and address. The plaintiff, refusing to surrender same to officials of the railway company, was placed under arrest, held for bail, and remained in a cell until the bail was furnished. The next morning he was acquitted of a charge of petit larceny. An action was instituted by the plaintiff against the railway company for false imprisonment and malicious prosecution. *Held,* the plaintiff could not recover. *Foulke* v. *New York Consol. R. Co.* (N. Y.), 127 N. E. 237.

By the general rule of the common law, one who finds and appropriates a lost chattel acquires title thereto and the right to possession thereof against all the world except the true owner. This rule of law has never been seriously questioned since the leading case of *Armory* v. *Delamirie*, 1 Strange 505, 2 Smith's Leading Cases, Hare & Wallace, 7th Am. ed., 636. Ordinarily the place where it is found does not make any difference. *Durfee* v. *Jones,* 11 R. I. 588, 23 Am. Rep. 528.

However, property voluntarily laid down and forgotten is not in legal contemplation "lost", but "mislaid"; and the owner of the place where it is left is the proper custodian, rather than the person who happens to discover it first. *State* v. *McCann,* 19 Mo. 249; *Kincaid* v. *Eaton,* 98 Mass. 139, 93 Am. Dec. 142; *State* v. *Courtsol,* 89 Conn. 564, 94 Atl. 973, L. R. A. 1916A 465.

Bailment does not necessarily and always, though generally, depend upon a contract *inter partes.* In some cases, the law, from considerations of public policy, imposes the liability of a bailee upon one who has, without private agreement, come into possession of the goods of another. It is the element of lawful possession, however created, and the duty to account for the thing as the property of another that creates the bailment. *Burns* v. *State,* 145 Wis. 373, 128 N. W. 987, 140 Am. St. Rep. 1081. It is the duty of the person upon whose premises the mislaid article is discovered to act as a gratuitous bailee for the owner, when the fact becomes known to him, and to use reasonable care for the safe-keeping of the same until the owner shall call for it. *McAvoy*